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U.S.D.C. - Atlanta

APR 03 2013

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM D. PHILLIPS,)
vs.)
INTERNAL REVENUE)
SERVICE,)
Defendant.)

Plaintiff,) CIVIL ACTION FILE NO. **JOF**

) **1:13-CV-1074**

COMPLAINT

COMES NOW Williams D. Phillips, Plaintiff in the above-styled action, and brings this complaint pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B). Plaintiff shows this Court as follows

1. William D. Phillips (hereinafter "Plaintiff") is a citizen of the United States and a resident of the State of Georgia and of DeKalb County.
2. Defendant Internal Revenue Service (hereinafter "Defendant") is an agency of the United States Government.
3. Defendant is subject to the jurisdiction and venue of this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

4. On September 7, 2012, the Law Office of Adam J. Conti, LLC, acting on behalf of Plaintiff, submitted a Freedom of Information Act (“FOIA”) request to Defendant seeking “copies of all e-mails generated from June 1, 2012 through June 5, 2012 between William Ankrum (SEID YVDCB), Irene Sanchez (SEID 1TSDB) and Stephen Manning (SEID 6MBNB). In addition, we request all e-mails specifically with Mr. Phillips name within the subject line or in the content of the message. Mr. Phillips may be identified as Williams Phillips, Bill Phillips or Bill.” A true and accurate copy of said request, without enclosures, is attached hereto as Exhibit “A”.
5. On October 30, 2012, Defendant responded by producing two (2) pages of requested records to Complainant. Defendant stated, “This is a full grant of your request.” Defendant did not claim to have withheld any documents from disclosure on grounds of any exemption. A true and accurate copy of said response, with the produced documents (and with Plaintiff’s home address redacted), is attached hereto as Exhibit “B”.
6. However, contrary to Defendant’s representation, the two pages of produced records did not constitute all of the responsive e-mails in Defendant’s custody and control. Plaintiff himself was already in possession of an e-mail thread or

chain that was responsive to his request, but that Defendant failed to produce. A true and accurate copy of the e-mail thread in question is attached hereto as Exhibit "C".

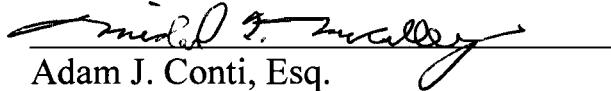
7. Therefore, in responding to Plaintiff's FOIA request, Defendant failed to conduct a reasonable search of its records. Had Defendant conducted a reasonable search, it would have located the documents contained in Plaintiff's Exhibit "C" and more.
8. On November 20, 2012, Plaintiff appealed Defendant's October 30, 2012 response to his FOIA request via a letter to Defendant's appeals department. A true and accurate copy of said letter, without enclosures, is attached as Exhibit "D".
9. On January 10, 2013, Defendant's appeals department replied that Defendant had conducted a reasonable search of its records and that Defendant has closed the case file. A true and accurate copy of said letter is attached as Exhibit "E".
10. Plaintiff has timely and properly exhausted his administrative remedies prior to filing this lawsuit.

WHEREFORE: Plaintiff requests that the Court:

- a. Order Defendant to find and produce records improperly withheld from Plaintiff;

- b. Award Plaintiff reasonable attorney's fees and costs of litigation; and,
- c. Grant Plaintiff such additional relief as the Court deems appropriate.

Respectfully submitted this 3rd day of April, 2013.



Adam J. Conti, Esq.
Georgia Bar No. 182475
Michael T. McCulley, Esq.
Georgia Bar No. 486989
Attorney for William D. Phillips

Adam J. Conti, LLC.
400 Northridge Road, Suite 255
Atlanta, Ga 30350
Telephone: 404-531-0701
Fax: 404-531-0082
E-mail: aconti@contilaw.com
mmcculley@contilaw.com

Employment Law

Adam J. Conti, LLC
Attorneys-at-Law
400 Northridge Road, Suite 255
Atlanta, Georgia 30350
404-531-0701
fax: 404-531-0082

E-mail: acconti@contilaw.com
www.contilaw.com

September 7, 2012

by Certified U.S. Mail, Return Receipt Requested
Internal Revenue Service
Disclosure Scanning Operation-Stop 93A
P.O. Box 621506
Atlanta, GA 30362-3006

Re: William D. Phillips
Request for Documents

Dear Disclosure Officer:

Our firm represents William D. Phillips with respect to matters arising from his employment as a Management Analyst with the Internal Revenue Service in Atlanta, Georgia. His executed Designation of Representative is attached.

I am writing your office to request that a copy of the following documents be provided under the Freedom of Information Act. We are requesting copies of all e-mails generated from June 1, 2012 through June 5, 2012 between William Ankrum (SEID YVDCB), Irene Sanchez (SEID 1TSDB) and Stephen Manning (SEID 6MBNB). In addition, we request all e-mails specifically with Mr. Phillips name within the subject line or in the content of the message. Mr. Phillips may be identified as William Phillips, Bill Phillips or Bill.

In order to determine Mr. Phillips' status for the applicability of fees, Mr. Phillips is the "Other Requester" seeking information for his personal use. As proof of identity, we have enclosed a copy of Mr. Phillips' passport card. Mr. Phillips is willing to pay fees for this request up to a maximum of \$200.00. If your office estimate the fees will exceed this limit, please inform our office prior.

Thank you for your consideration of this request.

Very truly yours,

Adam J. Conti

AJC/arf
Enclosures
cc: William D. Phillips

EXHIBIT

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A



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

EXHIBIT

B

October 30, 2012

William D. Phillips

[REDACTED]

Dear Mr. Phillips:

I am responding to your Freedom of Information Act (FOIA) request dated September 7, 2012 that we received on September 11, 2012.

You asked for copies of all e-mails generated from June 1, 2012 through June 5, 2012 between William Ankrum, Irene Sanchez and Stephen Manning. In addition, you requested all e-mails specifically with Mr. Phillips name within the subject line or in the content of the message. Mr. Phillips may be identified as William Phillips, Bill Phillips or Bill. I am enclosing a copy of the requested records consisting of 2 pages. This is a full grant of your request.

If you have any questions please call Disclosure Specialist Marian O Hale ID # 1000235178, at (213) 576-3633 or write to: Internal Revenue Service, Disclosure Scanning Operation – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F12256-0207.

Sincerely,

Marian O. Hale
Disclosure Specialist
Disclosure Office 13

Enclosure
Responsive Records

Manning Stephen (ACIO)

From: Sanchez Irene R
Sent: Tuesday, June 05, 2012 5:13 PM
To: Manning Stephen (ACIO)
Subject: RE: 5081 access

will do.

also just an update -

Bill Ankrum and Kurt Alberts will be chatting with Bill Phillips about having Bill Phillips provide some analytical support on software management.

I'll let you know the outcome.

irene
(512)417-3599

From: Manning Stephen (ACIO)
Sent: Tuesday, June 05, 2012 3:36 PM
To: Sanchez Irene R
Subject: 5081 access

Irene – realizing you inherited Bill Phillips from another organization, he may have had privileges to other systems in 5081 that he no longer needs. Can you check in the 5081 system for what he has access to and ensure that it is just stuff he needs for working in your organization? Anything else please delete.....thanks, and let me know when you get it done.....Steve

From: Phillips William D [william.phillips@irs.gov]

Sent: Monday, June 04, 2012 12:52 PM

To: Sanchez Irene R

Subject: RE: Support Needed

Ok, I am still finishing up a couple of things for you and will hopefully be done soon.

From: Sanchez Irene R

Sent: Monday, June 04, 2012 3:23 PM

To: Phillips William D

Subject: Support Needed

Hi Bill,

I wanted to give you a heads up that my peer Bill Ankrum of Operations Service Support (OSS) is interested in having you assist with some critical program activities around portfolio and software asset management.

I had previously let Bill know that you possessed a strong analytical skillset, but you were being underutilized in my org., performing ticket analysis (not GS-15 level).

Charlene will be scheduling a conference call for you and Kurt Alberts from Bill Ankrum's org to discuss how you can support OSS.

irene
(512)417-3599



From: Phillips William D [william.phillips@irs.gov]
Sent: Monday, July 23, 2012 9:06 AM
To: Phillips William D
Subject: FW: Bill Phillips

From: Dix Michael F
Sent: Wednesday, June 06, 2012 9:25 AM
To: Phillips William D
Cc: Janes Cathy J
Subject: RE: Bill Phillips

Sounds great Bill. I'll setup a call tomorrow morning sometime and go from there.

-Mike

From: Phillips William D
Sent: Wednesday, June 06, 2012 6:23 AM
To: Dix Michael F
Cc: Janes Cathy J
Subject: RE: Bill Phillips

Hello Mike,

Why don't we calendar something for early tomorrow? I am finishing up an analysis for Irene and then we can start fresh.

bill

From: Dix Michael F
Sent: Wednesday, June 06, 2012 9:19 AM
To: Phillips William D
Cc: Janes Cathy J
Subject: FW: Bill Phillips

William,

Do you have some free time today to discuss the activities around software and what the executives are looking for?

-Mike

From: Alberts Kurt E
Sent: Monday, June 04, 2012 10:34 AM
To: Dix Michael F
Cc: Alberts Kurt E
Subject: FW: Bill Phillips

FYI

Kurt Alberts
Service Assets & Configuration Mgt Program Manager
Voice 801-620-3606
Cell 801-389-2680
Fax 801-620-3603

From: Ankrum William H
Sent: Monday, June 04, 2012 11:32 AM
To: Sanchez Irene R; Alberts Kurt E
Subject: RE: Bill Phillips

Irene, yes – Kurt is interested in utilizing Bill on the current **Software Portfolio Triage** activities and our longer term **Software Asset Management** activities.

Bill can contact Kurt directly.

Thanks again,

Bill Ankrum

Director, Operations Service Support
User and Network Services (UNS)
Rm B4-401, 5000 Ellin Road
Lanham, Maryland 20706
202-283-7215 (tel)
202-870-1973 (cell)
202-283-4403 (fax)

From: Sanchez Irene R
Sent: Monday, June 04, 2012 11:23 AM
To: Ankrum William H
Subject: RE: Bill Phillips

Bill,

Would you be comfortable speaking to B. Phillips directly - this way you or Kurt could ask him specific questions for your needs.

If so, I'll let B. Phillips know that he can contact you or Kurt.

irene
(512)417-3599

From: Ankrum William H
Sent: Monday, June 04, 2012 10:21 AM
To: Sanchez Irene R
Subject: RE: Bill Phillips

Thanks – meanwhile I'll reach out to Kurt, I know we could use some good analytical assistance triaging our SW portfolio.

I let you know but COB.

Bill Ankrum

Director, Operations Service Support
User and Network Services (UNS)

Rm B4-401, 5000 Ellin Road
Lanham, Maryland 20706
202-283-7215 (tel)
202-870-1973 (cell)
202-283-4403 (fax)

EXHIBIT

D

Adam J. Conti, LLC

Attorneys-at-Law

**400 Northridge Road, Suite 255
Atlanta, Georgia 30350**

Employment Law

404-531-0701

E-mail: aconti@contilaw.com

fax: 404-531-0082

www.contilaw.com

November 20, 2012

Via Certified Mail and Return Receipt Requested

Internal Revenue Service Appeal
6377A Riverside Avenue, Suite 110
Riverside, CA 92506
ATTN: Commissioner

Re: William D. Phillips
FOIA Appeal

Dear Commissioner:

Our firm represents William D. Phillips with respect to matters arising from his employment as a Management Analyst with the Internal Revenue Service in Atlanta, Georgia. His executed Designation of Representative is attached.

On September 7, 2012, our office submitted a Freedom of Information request on behalf of Mr. Phillips regarding specific e-mails generated between June 1, 2012 through June 5, 2012. The request is attached as Exhibit A. Mr. Phillips received a response to that request on October 30, 2012 which included 2 pages with the stipulation that this was a full grant of his request. The response is attached as Exhibit B. We contests this determination and believe that there are additional records which have been withheld by the Internal Revenue Service in violation of Federal statutes.

On behalf of Mr. Phillips, we respectfully request the Office of Appeals to overturn the initial determination of the Internal Revenue Service, Office of Disclosure and compel the appropriate officials to produce all records initially requested. You may notify our office of your determination at the following address:

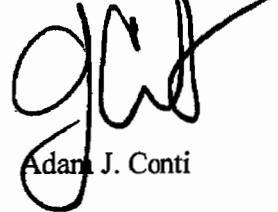
Adam J. Conti, LLC
Adam J. Conti
400 Northridge Road, Suite 255
Atlanta, GA 30350
(404) 531-0701
Fax: (404) 531-0082

Internal Revenue Service Appeals
November 20, 2012
Page 2

aconti@contilaw.com

If you need additional information or have any questions regarding this appeal, please contact the undersigned.

Very truly yours,



A handwritten signature in black ink, appearing to read "AJC".

Adam J. Conti

AJC/arf
Enclosures

cc: William D. Phillips (Via U.S. Mail)

Internal Revenue Service
Appeals Office M/S 55203
Fresno, CA 93888-0700

Date: JAN 10 2013

ADAM J. CONTI
ADAM J CONTI LLC
400 NORTHRIDGE ROAD SUITE 225
ATLANTA GA 30350

Department of the Treasury

Person to Contact:

Terri Carrillo
Employee ID Number: 1000157528
Tel: 559-253-4803
Fax: 559-253-4890

Refer Reply to:

AP:CO:FRC:TC

In Re:

Freedom of Information Act:
Client: WILLIAM D. PHILIPS

FOIA Case Number:

F12256-0207

Dear Mr. Adam J. Conti:

This letter is in response to your Freedom of Information Act (FOIA) appeal dated November 20, 2012, in which you sought review of the Disclosure Specialist's October 30, 2012 response to your FOIA request dated September 7, 2012.

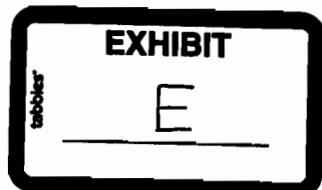
You requested documentation on behalf of your client, William D. Phillips. You stated that you requested e-mails generated from June 1, 2012 through June 5, 2012 between W. Ankrum, I Sanches and S. Manning that specifically contained your clients name within the subject line or in the content of the message.

The Disclosure Specialist stated that they provided 2 responsive documents in full and stated that the response was a full grant of the request.

You submitted an appeal stating that you believe there are documents that exist and should be provided. You requested a review of the Disclosure Specialist search. You requested that the Appeals Office overturn Disclosure Specialist's initial determination and compel the Office of Disclosure to produce all records requested.

Appeals responsibility concerning the appeal of FOIA cases is limited to a de novo review to ensure the documents withheld or redacted for the specific requester and documents requested fall within the FOIA exemption(s) cited. Appeals only has jurisdiction over the denial of documents in response to a FOIA request. We address the adequacy of the search, the appropriateness of the redactions and documents withheld.

As a courtesy, we reviewed the Disclosure Specialist search methods for the documents and found that the Disclosure Specialist did not deny your request for documents or exempted them under the FOIA. FOIA allows access to records and documents in your accounts and operating systems. The Disclosure office reviews the account and pulls the necessary files, copies and provides the documents. The FOIA does not require an agency to analyze the files for the documents requested nor prepare documents in response to your request. The Disclosure Specialist provided the documents found that were specifically requested.



We cannot address your assertions that other documents exist. We can only address whether the search was reasonable. In regard to the adequacy of a search, an agency must prove that "each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements." See Sosa v. FBI, No. 93-1126, slip op. at 1 (D.D.C. Nov. 4, 1993). We believe that the Disclosure Office has met its burden in regard to the adequacy of the search. The Disclosure Office is obligated to research your account for the documents requested. This was done. An agency must prove that "each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements." See Sosa v. FBI, No. 93-1126, slip op. at 1 (D.D.C. Nov. 4, 1993).

The Disclosure Specialist responded to your request and since the Disclosure Specialist did not deny any documents, there is no jurisdiction for this office to consider an appeal. Accordingly, we have closed the case file.

Sincerely,



Thomas W. Mitchell
Appeals Team Manager